

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Yuba)

THE PEOPLE,		C063950
Plaintiff and Respondent,		(Super. Ct. No. CRF09269)
v.		
ANDREW LOUIS CORNETT,		
Defendant and Appellant.		

Defendant Andrew Louis Cornett pled no contest to vehicular manslaughter and the unlawful driving or taking of a vehicle, with the understanding that this plea meant he violated his felony and misdemeanor probation in other cases, he would receive a stipulated sentence of 10 years 8 months in state prison, and other charges would be dismissed. Defendant was also advised he might receive an additional eight months for the violation of the felony probation case.

The factual basis for the plea showed that on May 31, 2009, defendant stole a truck, then drove while under the influence "of narcotic analgesics, a central nervous system stimulant, and cannabinoids" in a grossly negligent manner, through a red light, killing a pedestrian in a crosswalk.

The trial court sentenced defendant to 10 years 8 months in this case, revoked his probation, and imposed a consecutive eight-month sentence for a prior felony case. The trial court awarded defendant 184 days of actual custody credit and 92 days of conduct credit in this case.

Defendant timely filed this appeal.

We appointed counsel to represent defendant on appeal. Counsel filed a brief setting forth the facts of the case and requested this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Pursuant to this court's miscellaneous order No. 2010-002, filed March 16, 2010, we deem defendant to have raised the issue (without additional briefing) of whether amendments to Penal Code section 4019, effective January 25, 2010, apply retroactively to this pending appeal. We conclude that the amendments do apply to all appeals pending as of January 25, 2010. (*In re Estrada* (1965) 63 Cal.2d 740, 745 [amendments lessening punishment for crime apply to acts committed before enactment, provided the judgment is not final]; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393 [applying *Estrada* to amendment involving custody credits]; *People v. Doganiere* (1978) 86 Cal.App.3d 237 [involving conduct credits].) Defendant is not among the prisoners excepted from the additional accrual of

credit. (Pen. Code, § 4019, subds. (b) & (c); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.) Consequently, defendant, having served 184 days of presentence custody, is entitled to 184 days of conduct credits, instead of the 92 days awarded based on the prior law. (Pen. Code, § 4019, subds. (b) & (c).) The judgment is modified to award defendant 184 days of actual custody credits and 184 days of conduct credits.

There is a clerical error in the abstract of judgment. It shows defendant received a one-year sentence in the prior felony case instead of eight months. The new abstract must correctly reflect all components of the trial court's oral pronouncement of judgment. (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385; see *People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

Having examined the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment, as modified, is affirmed. The trial court is directed to prepare and forward to the Department of Corrections and Rehabilitation a new abstract of judgment.

We concur: ROBIE, J.

HULL, Acting P. J.

BUTZ, J.